

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1319 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE K.R.VYAS

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

GUNWANTBHAI CHANDULAL

KACHHIYA

Versus

DISTRICT DEVELOPMENT OFFICER

Appearance:

MR AS SUPEHIA for Petitioner

MR RA MISHRA for Respondent No. 1

MR SP HASURKAR WITH MR PB BHATT, AGP,
for Respondent No. 2

CORAM : MR.JUSTICE K.R.VYAS

Date of decision: 03/09/98

ORAL JUDGEMENT

Rule. Mr. R.A.Mishra for respondent No.1 and Mr. P.B.Bhatt, AGP, for respondent No.2 waive service of the Rule. At the request of the learned Advocates, this petition is taken up for final hearing to-day.

The petitioner is serving as a Senior Clerk with

District Development Officer, District Panchayat, Kheda-respondent No.1. By an order dated 15-11-1994 the petitioner was granted higher grade in the scale of Rs.1400-2600 with effect from 14-7-1988 on completion of nine years of service and consequently his pay fixation was also done by order dated 16-12-1994 vide Annexure "B" to the petition. Respondent No.1, however, by his order dated 30-1-1995 cancelled the higher grade granted to the petitioner on the ground that it was given by mistake. The said order is at Annexure "C" to the petition. The petitioner, therefore, approached the Civil Services Tribunal, Gandhinagar on 17-4-1996 challenging the said order of cancellation of higher grade granted to the petitioner. The Tribunal on 17-12-1997 rejected the appeal of the petitioner on the ground of limitation as well as on merits considering the question whether the higher grade granted to the petitioner was by way of mistake or not. The petitioner has, therefore, challenged the said order of 17-12-1997 passed by the Tribunal cancelling higher grade of scale granted to the petitioner on the ground that the same is illegal, arbitrary and in violation of the fundamental rights under Articles 14 and 16 of the Constitution of India.

Mr. Suphia, learned counsel appearing for the petitioner has submitted that the benefit of higher grade scale is not given to the petitioner due to the poor remarks appearing in the ACRs for five out of nine years and the adverse remarks for the period from 13-5-82 to 19-5-83, 1-6-83 to 31-3-84 and 6-9-84 to 31-3-85 were all communicated to the petitioner by three letters dated 30-12-86. In the submission of Mr. Suphia, the above adverse remarks cannot be considered for the purpose of promotion as they were communicated after a period of 3 to 4 years. Reliance is also placed on the decision of this Court in the case of C.N.Chavda vs Director General of Police, Gujarat State 1992 (1) GLH , 209. That was a case with respect to the adverse entries in the confidential reports of the petitioner of that case for the period between October 13, 1986 and March 31, 1987 and the same were communicated to the petitioner after about thirteen months later. This Court, after following the decision of the Supreme Court in State of Haryana vs P.C.Wadhwa, AIR 1987 SC 1201 and the Government circulars issued from time to time was of the view that adverse remarks should be communicated within six weeks. Since the communication of adverse remarks was grossly delayed , the same cannot be considered and accordingly the authorities were directed to ignore those adverse entries in petitioners' confidential report. In the instant case also, it was urged on behalf of respondent No.1 before

the Tribunal that the petitioner is not entitled to higher grade scale due to poor remarks appearing in the ACRs for five out of nine years. The petitioner was communicated the adverse remarks for the periods 1982-83, 1983-84 and 1984-85 by three letters dated 30-12-1986. The petitioner, of course, made representations against the said adverse remarks. However, the same were rejected on 24th July, 1989 by three letters. Now in view of the decision of this Court in the case of C.V.Chavda (supra), it cannot be considered for the purpose of promotion as they were communicated after a period of 3 to 4 years. Since this point was specifically raised by the petitioner before the Tribunal and as the Tribunal has not gone into and decided the same and instead rejected the appeal of the petitioner on the ground of limitation, Mr. R.A.Mishra, learned Advocate for respondent No.1 submitted that the petitioner cannot be permitted to raise the said contention of communication of adverse remarks on 30th December, 1986 in this petition after so many years and, therefore, the petition is required to be rejected on the question of delay only. It is not possible to accept the submission of Mr. Mishra for the simple reason that against the communication of adverse remarks the petitioner made representations and the same were rejected on 24th July, 1989. Since no decision was taken by the respondents either to promote and/or to grant higher grade of scale, there was no occasion for the petitioner to challenge the same. The Government for the first time decided on 15-11-1994 to grant higher grade scale of Rs.1400-2600 with effect from 14-7-88 on completion of nine years of service and the petitioner was in fact granted the higher pay fixation vide order dated 16-12-94. Since the same was cancelled on 30-1-1995, the petitioner approached the Tribunal. Since the question of communication of adverse remarks was not considered by the Tribunal and when the law is well settled, I see no difficulty in deciding the question raised by the petitioner. In my view there is no delay in approaching this Court on the part of the petitioner. In view of this, the petition is allowed. Respondent No.1 is directed to ignore confidential reports of the petitioner for the period between 13-5-82 and 31-3-85 and to consider the question whether the petitioner is entitled to higher grade scale of Rs.1400-2600 or not. The respondent No.1 is directed to decide the said question as expeditiously as possible. Rule is made absolute to the aforesaid extent with no order as to costs.
